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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS VARELAS,

Defendant and Appellant.

H043182

(Santa Clara County

Super. Ct. No. F1556349)

Defendant Jose Luis Varelas pleaded no contest to infliction of corporal injury (Pen. Code § 273.5, subd. (a))<sup>1</sup> and admitted two strike priors (§§ 667, subds. (b)-(i), 1170.12). The trial court sentenced defendant to four years in prison, as called for by his plea agreement.

Defendant's counsel filed an opening brief in which no issues are raised and asked this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436. We apprised defendant of his right to file a supplemental brief, which he did. In his letter brief, defendant contends trial counsel misled him regarding the terms of his plea agreement and rendered ineffective assistance.

After independent review of the record, we conclude that there are no arguable issues on appeal. As required by *People v. Kelly* (2006) 40 Cal.4th 106, 110, we will provide "a brief description of the facts and procedural history of the case, the crimes of

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

which defendant was convicted, and the punishment imposed.” We also describe defendant’s contentions and the reasons those contentions fail. (*Id.* at p. 124.)

## **I. Factual and Procedural Background<sup>2</sup>**

In June 2014, defendant threw his ex-girlfriend to the ground, causing a shoulder tendon tear and a fractured clavicle.

In a second amended felony complaint filed on September 21, 2015, the Santa Clara County District Attorney charged defendant with two counts of making criminal threats in violation of section 422. The complaint further alleged that defendant had suffered two prior convictions that qualified as strikes (§§ 667, subd. (b)-(i)), 1170.12). A third count, charging defendant with willfully inflicting corporal injury on an intimate partner in violation of section 273.5, subdivision (a), was added later.

On October 15, 2015, defendant pleaded no contest to the count 3 domestic violence charge and admitted the two strike priors. Before entering his plea, defendant filled out and signed a form entitled “Advisement of Rights, Waiver and Plea Form Felony.” In that form, he acknowledged that his potential maximum sentence was eight years. He initialed a box next to the following advisement: “[T]he prosecutor, my attorney, and I have agreed that if I plead guilty or no contest to the charge(s) and admit the allegation(s) and prior convictions listed above, the Court will sentence me to: [¶] State prison for 4 years.” He did not, however, initial the box next to an advisement stating “I understand if I am admitting that I have suffered a prior ‘strike’ conviction, prison work-time credit that I may get will not exceed 20% of the total term of imprisonment.”

The trial court held a sentencing hearing on November 9, 2015. At that time, the court dismissed counts 1 and 2 and sentenced defendant to a state prison term of four years on count 3.

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<sup>2</sup> The factual background is taken from the probation officer’s report.

The trial court granted defendant's request for a certificate of probable cause on January 7, 2016. In that request, defendant stated that he had accepted the plea agreement on the understanding that he would serve half of his four-year sentence, not 80 percent, as his prison records indicate.

Defendant timely appealed.

## **II. Discussion**

In his letter brief, defendant contends trial counsel assured him he would be required to serve only 50 percent of the four-year sentence because the prosecutor had agreed to have one strike dismissed. However, defendant has since learned that he must serve 80 percent of his term. Defendant asserts trial counsel was ineffective, either in failing to object when the two strike priors were found true, or in misleading him regarding the terms of the plea agreement. Defendant emphasizes that he does not want to appeal his plea bargain, which he characterizes as "fair."

The three strikes law provides that a prisoner with one or more prior strike convictions can earn no more than "20 percent of his [or her] total time of imprisonment in conduct credits, requiring him [or her] to serve at least 80 percent of his [or her] total sentence." (*People v. Brady* (1995) 34 Cal.App.4th 65, 69-70; §§ 1170.12, subd. (a)(5), 667, subd. (c)(5).) Therefore, here, the court would have had to dismiss both of defendant's strike priors to avoid the so-called 80 percent rule of the three strikes law.

In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate both that his or her counsel's representation fell below an objective standard of reasonableness (deficient performance prong), and that but for counsel's error, it is reasonably probable that the defendant would have realized a more favorable result (prejudice prong). (*Strickland v. Washington* (1984) 466 U.S. 668, 691-692 (*Strickland*); *People v. Ledesma* (1987) 43 Cal.3d 171, 216-217.) "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. . . . If it is easier to

dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed.” (*Strickland, supra*, at p. 697.)

We begin with defendant’s contention that trial counsel rendered ineffective assistance by failing to object when the court found true both strike priors.

To demonstrate prejudice, defendant must show it is reasonably probable the court would have struck his strike priors had his counsel requested it. (*People v. Johnson* (2003) 114 Cal.App.4th 284, 306.) He makes no effort to do so. Accordingly, his claim fails.

Defendant’s second contention is that trial counsel misled him regarding the terms of the plea agreement. That claim fails because defendant fails to show that the misinformation prejudiced him. “[W]hen a defendant claims misadvisement *by defense counsel* and seeks reversal due to ineffective assistance of counsel, the defendant has the burden to show he or she would have made a different decision had defense counsel advised properly.” (*People v. Miralrio* (2008) 167 Cal.App.4th 448, 463.) Defendant makes clear in his letter brief that he does not want to challenge his plea agreement. He refers to it as “fair.” Accordingly, we conclude it is not reasonably likely that defendant, who was facing eight years in prison, would have refused the plea agreement had he been properly advised that he would be required to serve approximately three years and three months as opposed to two years.

In addition to considering the arguments set forth by defendant in his letter brief, we have also conducted an independent review of the record and have concluded there are no arguable issues on appeal.

### **III. Disposition**

The judgment is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.